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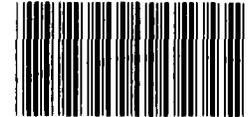
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OCTOBER 13, 1982

B-208732

The Honorable David Michael Staton
House of Representatives



119921

Dear Mr. Staton:

Subject: Reduction-in-Force at the Charleston,
West Virginia, Black Lung District Office
and Factors Affecting the Charleston
Office's Workload (GAO/HRD-83-5)

In response to your April 9, 1982, request and later discussions with your office, this report includes information on (1) a reduction-in-force (RIF) that took place at the Department of Labor's Charleston, West Virginia, black lung district office, (2) the hiring of employees to fill permanent positions in the Charleston office, and (3) the Charleston office's ability to review and process a large number of case files and other documents received from Labor's Division of Coal Mine Workers' Compensation Programs in Washington, D.C.

At a July 27, 1982, briefing, we told you that (1) some employees released by Labor during a RIF had appealed their separation to the Merit Systems Protection Board and (2) the Board had determined that Labor had misinterpreted RIF rules and regulations and had improperly released 18 of the 19 employees who had appealed. Of the five Charleston employees who appealed their release, the Board found that Labor improperly released four. We advised you that Labor had properly filled permanent positions at the Charleston office.

Regarding the Charleston office's ability to review and process documents related to miners' or dependents' claims for black lung benefits, we identified the following factors that contributed to the Charleston office's heavy workload: the RIF, the release of other employees whose terms of employment expired on March 31, 1982, the need to determine which approved claims met certain requirements contained in the 1981 amendments to the black lung legislation, and the transfer of black lung case file information from the national

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office. We also found that the inventory of claims for which claims examiners needed to make initial claim determinations had increased in the 6-month period ended in June 1982. District office employees told us that, for a short time, all mail was filed in individuals' case folders without being reviewed.

The results of our work are summarized in enclosure I. At your request, we did not take the time to obtain written agency comments. However, we discussed the matters covered in the enclosure with agency officials, and their comments are included where appropriate. Unless you publicly announce its contents earlier, we plan no further distribution of the report until 30 days after issuance. At that time, we will send copies to the Secretary of Labor; the Director, Office of Management and Budget; and other interested parties and make copies available to others upon request.

Sincerely yours,



Philip A. Bernstein
Director

Enclosure

REDUCTION-IN-FORCE AT THE
CHARLESTON, WEST VIRGINIA, BLACK LUNG
DISTRICT OFFICE AND FACTORS AFFECTING
THE CHARLESTON OFFICE'S WORKLOAD

OBJECTIVES, SCOPE, AND METHODOLOGY

We reviewed the Department of Labor's personnel practices as they related to the reduction-in-force (RIF) conducted at the Charleston, West Virginia, black lung district office to determine if Labor conducted the RIF in accordance with applicable regulations and guidelines prepared by the Office of Personnel Management (OPM). We also obtained information on factors in addition to the RIF that contributed to the Charleston office's heavy workload.

In addition to reviewing OPM's documents on RIF activities, we examined pamphlets prepared by Labor that explained these activities and other documents, such as RIF notices and retention registers, that Labor used in planning and conducting the RIF. Further, we reviewed Merit Systems Protection Board (MSPB) decisions related to this RIF.

In examining the Charleston office's workload, we inspected boxes of claims and claim related materials that the office had received from the Division of Coal Mine Workers' Compensation Programs (Division) in Washington, D.C. We also reviewed (1) Charleston's monthly production reports from January to June 1982 and (2) a draft report that discussed the results of a Labor accountability review team's May 1982 visit to the Charleston office.

We discussed these activities with (1) Labor officials in Washington, D.C.; Philadelphia, Pennsylvania; and Charleston, West Virginia; (2) current Charleston office staff; and (3) former Charleston staff who had appealed the RIF decision. We performed our review in accordance with the Comptroller General's current standards for audit of governmental organizations, programs, activities, and functions.

MSPB DETERMINED THAT LABOR
IMPROPERLY CONDUCTED A
RIF OF TERM EMPLOYEES

According to MSPB decisions issued in April and June 1982, Labor misinterpreted OPM regulations related to RIFs and improperly released 18 of 19 term employees 1/ who had appealed their

1/Term employment is used to fill positions that will last longer than 1 year and less than 4 years but are clearly of a project nature and will terminate upon completion of the project.

January 29, 1982, separation from Labor's region III black lung district offices. Of the five Charleston office employees who appealed their separations, Labor had improperly released four of them. Events leading to the RIF, Labor's actions in conducting the RIF, and MSPB's decisions related to this RIF are discussed below.

RIF necessitated by shortage
of funds; only region III
employees released

Labor began planning for black lung program staffing reductions in the fall of 1981, after it had received notice that the administration planned to reduce its fiscal year 1982 program budget. Previously, in January 1981 the Office of Management and Budget (OMB) had directed Labor to reduce the program's staffing levels. Labor headquarters officials testified before MSPB that the five district offices in region III (Philadelphia) could absorb all of the necessary reductions because the region had 75 percent of the caseload and 75 percent of the work force. Region III was selected as the RIF site because it (1) was experiencing a decline in its current caseload, (2) had nearly completed the reevaluation process for cases that were reviewed under the 1978 amendments to the black lung legislation, and (3) had the most employees.

The administration's fiscal year 1982 budget request submitted to the Congress would have reduced Labor's funds to administer the black lung program by over 15 percent to \$20.87 million. Although the Congress did not enact this budget, it did enact continuing resolutions that provided Labor with less funds to administer the black lung program than it had received in fiscal year 1981. As a result of these actions, the Congress authorized Labor to spend \$23.4 million in fiscal year 1982 for black lung program administration. This authorization is about \$1.3 million less than Labor spent to administer this program in fiscal year 1981.

In addition to the spending reductions, on November 18, 1981, OMB directed Labor to reduce black lung staffing levels in fiscal year 1982 to 481 full-time equivalent positions, or about 50 positions below the employment level at the end of fiscal year 1981. According to Labor officials, OPM also stated that Labor could not extend beyond the March 31, 1982, expiration date the appointments of employees that had previously filled term positions in the black lung program.

Labor officials recognized that even though all term appointments were due to expire on March 31, 1982, Labor would have to release some term employees sooner if it planned to operate within its authorized spending levels. On January 29, 1982, Labor released 49 term employees from four of the five district offices within region III--9 from the Charleston office; and 28, 10, and 2 from the Johnstown, Wilkes-Barre, and Greensburg, Pennsylvania, offices,

respectively. The Parkersburg, West Virginia, office had already lost some staff through attrition, and further reductions were not required.

Labor's actions in
conducting the RIF

Except for deciding which term employees to release, Labor appeared to follow Federal regulations and OPM's Federal Personnel Manual instructions in conducting this RIF. According to one of the MSPB decisions related to this RIF, Labor officials told a region III personnel specialist that it would be "Department policy" not to geographically reassign term employees affected by the RIF and to ignore the retention registers in abolishing the positions.

In the fall of 1981, Labor officials in Washington, D.C., and region III determined the number of positions Labor had to abolish in each district office. Later, these officials consulted with each district office manager and identified the staffing mix (professionals and clericals) that each office needed to function effectively. These officials also asked the district managers to identify individuals they wished to retain by evaluating their personnel using factors, such as whether the employee (1) was eligible for appointment to one of the post-April 1, 1982, permanent positions; (2) had the skills to perform the duties of more than one position; and (3) had an "exemplary" performance record. Labor officials told MSPB that the objective of this evaluation was to keep employees whose work could contribute to the "best functioning work force."

Concurrently with preparing these evaluations, Labor personnel specialists in region III prepared notices of the RIF and provided employees with informational packages that included pamphlets on RIF procedures, appeal rights, Labor and OMB placement assistance, and severance pay. Labor followed OPM guidelines related to (1) notifying employees of the proposed RIF in a timely manner and (2) providing employees with the necessary RIF information. The documents and pamphlets provided to these employees clearly stated that because they were filling term positions, their right to obtain Labor job placement assistance was limited.

A personnel specialist from region III also had responsibility for preparing retention registers ^{1/} in accordance with OPM guidelines. These guidelines required Labor to establish these registers because individuals who occupied positions that Labor planned to abolish may have rights to other positions. These registers would normally be used for deciding which employees would lose their jobs (those placed lowest on the register) and which other positions might be available to released employees.

For this RIF Labor officials determined that Labor would not have to release employees filling permanent positions. Therefore, Labor only placed the names of term employees on the retention registers it developed. For the positions and grades that Labor planned to abolish, it established nine retention registers.

Instead of releasing term employees who were placed lowest on each of these retention registers, Labor officials believed that based on the definition of "available position" contained in OPM's Federal Personnel Manual, they could disregard the retention registers in releasing these term employees. The officials' rationale was that because an "available position" is one that is expected to last at least 3 months and because all term positions in the black lung program were going to be abolished within this period, Labor had no available positions to offer the employees whom it planned to release.

In addition, Labor officials believed that they could (1) avoid the expense of geographically relocating term employees who had less than 2 months of employment remaining and (2) retain employees who could contribute to the "best functioning work force."

^{1/}OPM guidance for establishing retention registers required Labor to establish a "competitive area" and a "competitive level" and to later establish a retention standing for each employee listed on a register. For Labor, the competitive area for this RIF was defined by union agreement as all Employment Standards Administration employees in region III regardless of which field or district office the employee worked in. Labor personnel specialists defined each competitive level as a single job classification at a specific grade (i.e., GS-11, Workers' Compensation Claims Examiner). After Labor established the competitive area and levels for this RIF, it developed the retention standing of each employee by using the four OPM-required retention factors. These factors are (1) the type of appointment (e.g., term or career), (2) veterans preference, (3) length of Federal service, and (4) current performance rating.

MSPB disagreed with Labor's
interpretations; most appealed
RIF actions reversed

In four separate decisions, MSPB stated that agencies (Labor in this case) are not permitted to base RIF decisions on incumbents' job performance or any other personal characteristics. MSPB found that Labor had shown that "there was an actual shortage of funds which necessitated the RIF" and "RIF procedures were invoked for legitimate and permissible reasons." However, Labor had misread and misapplied certain Federal regulations and OPM guidelines in conducting this RIF. Of the 49 term employees that Labor released in January 1982, 19 employees--including 5 employees that Labor released from the Charleston office--appealed their release to MSPB. For 18 of the 19 released employees, including 4 of 5 Charleston office employees, MSPB reversed Labor's RIF decisions.

As discussed in the previous section, Labor officials believed that they did not have to release employees listed last on the retention registers, stating that all term positions in the black lung program were scheduled to expire on March 31, 1982, and that no available positions existed to which the released employees could be assigned. According to the MSPB decision, Labor misinterpreted OPM's Federal Personnel Manual when it tried to apply the "available position" concept to these term employees. The available position concept applies when an agency releases an employee from one competitive level and the released employee may be entitled to a position in another competitive level, with a different grade or job series.

Because Labor released employees within one competitive level, MSPB pointed out that Labor should have followed its instructions and pamphlets that stated

"* * * selection of employees to be released from the competitive level begins at the bottom of the register, that is, with the employee in the lowest subgroup who has the latest [most recent] service computation date."

* * * * *

"* * * the normal retention register order must be followed when employees are to be released from their competitive levels."

In effect, MSPB rejected Labor's assertion that it did not have to follow retention register order in conducting the black lung program RIF.

MSPB reversed all but 1 of the 19 appealed RIF actions. The RIF that it upheld involved a claims examiner trainee in the Charleston office. Because this individual was the only examiner trainee in region III, this person was the only one listed on a retention register. As such, Labor did not have a choice of whom to release.

After MSPB decided these cases, Labor provided MSPB with documentation of the corrective action that it planned to take. Labor told us that the 18 employees that it improperly released would receive back pay for the period from January 29 through March 31, 1982. Labor officials estimated that Labor would have to pay these employees a total of about \$60,000.

LABOR FILLED PERMANENT
POSITIONS PROPERLY

Labor acted properly in filling nine permanent positions at the Charleston district office. Some Charleston office term employees released by Labor during the RIF complained that they were improperly precluded from competing for permanent positions at the Charleston office. Because the former employees were term employees, they had no special reemployment rights in competing for positions that Labor filled through internal merit staffing and OPM's "Certificate of Eligibles" procedures.

Under internal merit staffing procedures, agencies may not select individuals for a permanent position unless they have established "competitive status" from previous Federal employment. Four of the nine permanent positions in Charleston were filled by former Federal employees who had "competitive status."

Labor filled another four positions using OPM's Certificate of Eligibles procedures. Under these procedures, OPM prepared a certificate that listed the highest rated applicants for the permanent black lung positions. Term employees that Labor had released during the RIF or after their term appointments expired would, in effect, compete with other individuals who had been tested for the types of positions available in the black lung program. Because these four positions were entry-level positions, Labor's union agreement required Labor to use OPM's certificates to fill these positions.

For the last position (a supervisory position), Labor, under a special referral program, chose an individual that OPM had released during a RIF.

We found that two of the five Charleston office employees who had appealed Labor's RIF action were selected for permanent positions at the Johnstown black lung district office. One is currently working in Johnstown; the other declined the position. We noted that these two individuals had applied for claims examiner

positions in Charleston. Their names appeared on an internal merit staffing list with the names of four other individuals. Labor had no obligation to select the two former Charleston office employees and chose three of the other four individuals to fill the claims examiner positions.

Labor filled 114 permanent positions in its black lung program after the January 1982 RIF; 101 of the individuals selected to fill these positions had worked in the black lung program immediately before the RIF. Most of these individuals had been term employees whose employment ended on March 31, 1982. Five of the other 13 individuals had previous black lung program experience.

INFORMATION ON THE CHARLESTON OFFICE'S WORKLOAD

The RIF, the expiration of the other term positions on March 31, 1982, the need to determine which approved claims met certain requirements contained in the 1981 amendments to the black lung legislation, and the transfer of black lung case files from the national office have contributed to an expansion of the Charleston office's workload and an increase in its backlog of work.

Loss of term employees affected Charleston office's staffing

After Labor released term employees and hired staff to fill permanent positions, the Charleston office had nine fewer positions to process its workload. Before the RIF in January 1982, the Charleston office had 32 positions. After the RIF, the release of the other term employees on March 31, 1982, and the hiring of individuals to fill several positions in early 1982, this office had 23 positions.

According to the district office manager, the office had 11 claims examiners before the RIF and only 6 after the personnel reductions and hirings took place. He also told us that the loss of claims examiners has seriously affected the office's ability to process its workload. One claims examiner told us that her workload had doubled since January. Before the RIF, she was responsible for deciding claims that ended in eight specific two-digit social security numbers; in March and April 1982, she became responsible for handling these claims and claims that ended in eight other two-digit social security numbers.

Legislation required review
of black lung claims

Amendments to the black lung legislation enacted in December 1981 required Labor to identify approved claims for which responsible mine operators would no longer be liable. Because the Division could not identify these claims using its management information system, the district office staffs had to review many approved claims to identify those that met the criteria in the 1981 amendments. According to a May 1982 memorandum, the director of the Coal Mine Workers' Compensation Program wrote that identifying these "transfer of liability cases" was the Division's highest priority.

Amendments to the black lung legislation enacted in 1978 (1) transferred responsibility for paying black lung benefits from the Federal Government to individual coal mine operators or to the black lung disability trust fund and (2) removed restrictive provisions in the law which prevented many claimants from receiving benefits. These amendments also required Labor to re-review all previously denied and pending black lung claims. Labor later approved some of these claims and found that responsible mine operators were liable for paying these miners' black lung benefits.

The 1981 amendments, in effect, stated that individual mine operators would not be responsible for paying benefits related to those claims that Labor had denied before the 1978 amendments and later approved. Labor had to identify an estimated 10,800 to 11,300 claims that had previously been denied and were later approved. Instead of a responsible operator being liable for these claims, Labor will pay these miners' benefits from the black lung disability trust fund. The liability for paying these claims was transferred from a specific mine operator to the trust fund.

In April and May 1982, the national office sent the Charleston office a considerable number of boxes of case folders for those beneficiaries who resided within the geographic area for which the Charleston office was responsible. As the Division's highest priority, the Charleston office staff had to identify which of these cases were the "transfer of liability cases." One claims examiner told us that other than identifying and taking action on transfer cases, she only handled two or three congressional inquiries per week.

Many claim files scheduled for
retirement to records centers
contained information that
required some action

In the past year or so, the Charleston office has received from the national office hundreds of boxes of documents related to miners' claims for black lung benefits. Many of these boxes

were supposed to contain files related to denied claims that were at least 1 year old. In these cases, the claimant had not appealed the denial or had exhausted every avenue of appeal and Labor had upheld the decision to deny the claim. Other boxes contained loose documents and letters that had not been placed in miners' case folders.

According to Division instructions, the district offices were supposed to determine if any of the above cases were still active and then prepare the required documents for shipping the inactive cases to a Federal Records Center. Region III officials told us that 17 to 20 percent of the cases proved to be active cases requiring actions, such as paying attorneys' fees or preparing a case for appeal. According to district office staff, because other higher priority work needed to be done, they did not work on active cases unless a congressional inquiry was received.

Information on the boxes of documents transferred to the Charleston office follows:

- In the spring of 1981 the office received about 110 boxes of denial claims that its staff had to review and prepare for shipment to a Federal Records Center.
- In February 1982 the office received almost 5,000 more denied claims.
- In May 1982 a national office accountability review team found about 70 boxes of files that the office had received in April and May 1982. The review team reported that, for the most part, these boxes had not been opened and were on the floor throughout the office. The review team recommended that additional shelving be purchased and the boxed files be opened, organized, and labeled. In commenting on the review team's findings, the district office manager reported that the office had received 200 to 300 boxes of files during the previous 12 months.

When visiting the Charleston office in late June 1982, we found that, although many of the boxes were still on the floor, the boxes' contents appeared organized; that is, documents were filed in case files and the files were arranged in social security number sequence.

Workload affects processing
of claims and staff morale

According to a district official, the events described in the previous sections have contributed to an increase--over the 6-month period ended in June 1982--in the number of claims needing an initial eligibility determination.

From January 1 to June 30, 1982, Charleston's inventory of claims that needed an initial eligibility determination increased from 843 to 1,301. According to regional and Division officials, some of this increase was not associated with the RIF or other special projects. These officials told us that, because regulations implementing the 1981 amendments to the black lung legislation have not been finalized, most claims filed after January 1, 1982, have not been adjudicated.

According to district office employees, in April and May 1982, incoming mail was filed in claimants' files without being read. Currently, all incoming mail is forwarded to the supervisor responsible for that claim, and he or she determines whether the mail requires immediate attention.

Several district employees with whom we spoke expressed frustration at not being able to do the job for which they were hired. Instead of reviewing claims for purposes of making eligibility decisions, they were involved in (1) retiring cases to the Federal Records Center, (2) reviewing and placing in the proper files the contents of numerous boxes of documents received from the national office, and (3) processing the "transfer of liability cases." Several employees believed that these activities took away from the services that they were supposed to provide to claimants. Region III officials told us that, with the RIF, the "transfer of liability cases," and the numerous boxes of claim files received from the national office, they could understand why the district office staff felt frustrated.